IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 1505 (S/S) 2006

1. Pratap Singh S/o Late Prem Singh,
   at present working as Vaidhan Shayak (Dealing Assistant)
   in the office of the Deputy Director Bhutatva
   Evem Khanikarm Vibhag,
   Uttaranchal Regional Office Haldwani, Nainital,
2. Surendra Pratap Singh S/o late Than Singh,
   at present working as Drill Operator,
   in the office of the Deputy Director Bhutatva
   Evem Khanikarm Vibhag,
   Uttaranchal Regional Office Haldwani, Nainital,

..... Petitioners.

Versus

1. Principal Secretary,
   U.P. Re-organization Act, Samnyak Samitee,
   U.P. Shasan, Vikash, U.P. Lucknow,
2. Principal Secretary, Uttaranchal State Re-organization
   Samnyak Samitee, Uttaranchal Shasan, Dehradun,
3. Union of India through Secretary Karmik,
   Lok Shikayat Evem Pension Directorate,
   (Karmik Evem Prakashan Vibhag),
   Lok Nayak Bhawan II Floor, Kalam Market, New Delhi,
4. State of Uttar Pradesh through Secretary,
   Industrial Development Department, U.P. Shasan, Lucknow,
5. Director Bhutatva Evem Khanikarm Vibhag,
   Uttar Pradesh, Lucknow,
6. State of Uttaranchal through Secretary,
   Industrial Development Department,
   Uttaranchal Shasan, Dehradun,
7. Director Bhutatva Evem Khanikarm Vibhag,
   Udhyog Nideshalaya, Uttaranchal, Dehradun,
8. Addl. Director Bhutatva Evem Khanikarm Unit,
   Udhyog Nideshalaya, Uttaranchal, Dehradun,
9. Addl. Director Bhutatva Evem Khanikarm Vibhag,
   Uttaranchal Regional Office, Haldwani Nainital,
10. Bhu- Vaigyanik/ Incharge Officer,
    Bhutatva Evem Khanikarm Vibhag,
    Uttaranchal Regional Office, Haldwani Nainital

.....Respondents.

Sri M.C. Kandpal, learned Sr. Counsel for the petitioner,
Sri N.P. Sah, learned Standing Counsel for the State/ respondent nos.2,6,7,8,9,10,
Smt. Beena Pandey, learned Standing Counsel for State of U.P./respondent nos. 1,4,5, and
Smt. Anjali Bhargava, learned Standing Counsel for Union of India/ respondent no. 3.

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.C. Kandpal, learned Sr. Counsel assisted by Sri S.S. Chaudhary, learned counsel for the petitioners, Sri N.P. Sah, learned Standing Counsel for the State/ respondent nos. 2,6,7,8,9,10, Smt. Beena Pandey, learned Standing Counsel for State of U.P./respondent nos. 1,4,5, and Smt. Anjali Bhargava, learned Standing Counsel for Union of India/ respondent no. 3.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

I. Issue a writ, order or direction in the nature of certiorari to quash the order dated 30.10.2006 & 28.11.2006 passed by the Secretary Industrial Development department Uttaranchal Shasan, Dehradun and Additional Director Bhutatva Evem Khanikarm Unit, Udhyog Nideshalaya, Uttaranchal, Dehradun annexed as annexure no. 6 & 7 to the writ petition,

II. Issue a writ, order or direction in the nature of mandamus commanding and directing to respondent authorities to allot the petitioner in the cadre of State of Uttaranchal on the basis of the option (being the allottees of Hill Sub- Cadre) and domicile of State of Uttarakhand,

III. Issue any other writ, order or direction which this Hon'ble Court may think deem fit and proper in the circumstances of the case,

IV. Award the cost.

Submission of the learned counsel for the petitioners is that the petitioner no. 1 was appointed on the post of Drill

Helper vide order dated 17.7.1973 with the respondent no. 5. Similarly the respondent no.2 was appointed on the post of Drill helper with respondent no. 5 vide order dated 20.09.1984. Under the Hill Sub Cadre Rules 1992, the petitioners had opted for Hill Sub Cadre in the year 1993. Before creation of State of Uttarakhand and even after creation of State of Uttarakhand in pursuance of the order of Director Bhutatva Evem Khanikarm Vibhag, Uttarakhand, the petitioners opted for State of Uttarakhand, however by the impugned orders dated 30.10.2006 and 28.11.2006 passed by respondent no. 6 & 8 respectively the petitioners have been directed to join the office of respondent no. 5 at Lucknow. Aggrieved with these orders, the petitioners have filed the present writ petition.

Neither the petitioners nor the respondents could show that which of the State is allocated to the petitioners. The petitioners are permanent resident of State of Uttarakhand and at the time of creation of State of Uttarakhand, the petitioners were serving in the hill district of the erstwhile State of U.P. and even after creation of State of Uttarakhand, they were continuously serving in the State of Uttarakhand. Though, the posts on which the petitioners were working are still vacant in the State of Uttarakhand and in spite of this fact, the petitioners have been directed to join their duties in the State of U.P. The petitioner have relied upon the judgment of Hon'ble the Division Bench of this Court in writ petition no. 343/2005 (S/B) Dr. I.P. Sharma vs. State of Uttarakhand and eight others, decided on 21st December 2005; wherein Hon'ble the Division Bench has held that in the circumstances the petitioner should have been given opportunity and has further directed the petitioner to make representation before the competent authority raising all his grievances and till the representation is

decided, the Division Bench directed the respondents to allow the petitioner to continue on the post held by him.

This Court on 06.11.2006 passed order that meanwhile the petitioner may make his representation to the concerned authority, who may consider the same preferably within a period of one month, from the date certified copy of this order is produced before him.

Learned Sr. counsel has submitted that the petitioners have already moved representation on 11.012.2006 to all the respondents including the respondent no. 3, however no order has been passed by the respondents till date.

In the circumstances aforesaid, I deem it fit and proper to direct the petitioners to submit a fresh representation before respondent no. 3 raising all their grievances within a period of two weeks from today and it is expected that the respondent no. 3 shall take decision on the representation, if any moved, within a period of there weeks from the date of production of a certified copy of this order alongwith the representation.

Till 30th April 2007 or till the representation of the petitioner is decided by respondent no. 3 whichever is earlier, the petitioners may be allowed to continue in the State of Uttarakhand.

With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghilidyal, J.)

February 22, 2007:
NCM: